Supreme Court, U.S.
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No. 90-1352

In The

Supreme Court of the United States

October Term, 1990

MEXICAN AMERICAN BAR ASSOCIATION OF TEXAS (MABA), et al.,

Appellants,

v.

THE STATE OF TEXAS, et al.,

Appellees.

On Appeal From The United States District Court For The Western District Of Texas

MOTION TO DISMISS OR AFFIRM ON BEHALF OF APPELLEE STATE DISTRICT JUDGE PAUL R. DAVIS, JR.

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QUESTION PRESENTED

Does Section 5 of the Voting Rights Act require preclearance of an elected judgeship created by a statute enacted and implemented in 1971 more than a year before the Voting Rights Act was effectively extended to Texas?

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Appellee, Honorable Paul R. Davis, Jr., urges that this case presents no issues warranting plenary review and that this appeal should be dismissed or alternatively the judgment of the three-judge court should be affirmed. Judge Davis presently sits as Judge of the 200th District Court of Travis County, Texas and was permitted to intervene below to defend the validity of his judicial post.

STATEMENT OF RELEVANT FACTS

On June 1, 1971, the Texas Legislature enacted S.B. 515, creating the 200th and 201st District Courts of Travis County, Texas. S.B. 515 became effective on August 30, 1971. The 200th District Bench was filled by the appointment of the Honorable Charles Matthews who took office on September 1, 1971. The judicial seat has been continuously occupied since that date, the current incumbent Paul R. Davis, Jr., assumed the office in 1983 following the resignation of Judge Matthews.

The 1975 amendments to the Voting Rights Act extended coverage to Texas for the first time. The statute had a retroactive effect to November 1, 1972. As of November 1, 1972 the 200th District Court had been in existence and functioning for more than one year.

ARGUMENT

SECTION 5 OF THE VOTING RIGHTS ACT DOES NOT APPLY TO THE CREATION OF THE 200TH DISTRICT COURT OF TRAVIS COUNTY

Section 5 of the Voting Rights Act does not apply to the creation of the 200th District Court of Travis County.

Section 5 of the Voting Rights Act requires Justice Department preclearance "whenever a State . . . shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1972." The State of Texas created the

200th District Court by enactment in 1971 and implemented that enactment in September 1971 by the appointment of the Honorable Charles Matthews to the Court. The Plaintiffs torture the statutory language and its obvious purpose, by attempting to reach back into 1971 and invalidate a Court that has been in operation for almost 20 years.

The United States agrees with our interpretation of the statute. The Government's brief asserts "The other judgeship (District 200), however, was not subject to preclearance because its effective date was before November 1, 1972." (Brief of the U.S. at 22). There is no reasonable interpretation of the Act which could extend its coverage to the creation of the 200th Judicial District Court.

CONCLUSION

The judgment of the District Court should be affirmed with respect to the 200th District Court of Travis County.

Respectfully submitted,

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